IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND
THE HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT PETITION No.18868 of 2004

Between:

M/s.Bharat Heavy Plate & Vessels Limited, Visakhapatnam,
rep. by its Dy.Manager (Contracts), Sri K.P. Mishra.

..... PETITIONER

AND

M/s.JMC Projects (India) Limited, Regd.& Corporate Office,
Level-11, JMC House, Ambavadi, Ahmedabad 380 006,

rep. by its Senior Officer, Sri S.A. Uday Bhaskar.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue notice, call for records, quash the order made in A.A.No.21 of 2004 dated 2-7-2004 by Learned Single Judge His Lordship Justice Sri V.V.S. Rao, by issuing a Writ of Certiorari or any other appropriate Writ or Order or orders or direction or directions.

Counsel for the Petitioner: Mr.P.NAGESWAR SREE

Counsel for the Respondent : Mr.R.VINOD REDDY

FOR M/S.MOHAN VINOD &

ASSOCIATES

The Court at the admission stage made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

The writ petition has been filed to question the legality and validity of the order dated 2nd July 2004 passed by the learned single Judge of this Court allowing Arbitration Application No.21 of 2004 filed by the respondent, thereby directing the dispute to be referred to sole arbitrator, a retired Judge of this High Court.

The ground to challenge the order in the writ petition is that on 31st January 2003 and 1st February 2003, there was a joint meeting held, in which minutes were signed by the representatives of the parties and both the parties agreed that all issues relating to the contract in question stood resolved and there was no claim whatsoever, and that the minutes were treated as contract saying that there has been full and final settlement of all claims. It is also stated that the petitioner herein agreed to release the outstanding payment of Rs.42,26,000/- including security deposit, which was, in fact, released to the respondent by two cheques and having received the same, the respondent was precluded from approaching the Court by filing an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act').

Learned counsel for the petitioner would place reliance upon an order passed by a single Judge of Delhi High Court in **Continental Construction Ltd. v. Balfour Beaty Ltd.,** holding that when there is settlement of mutual claims and there remains no dispute to be referred to arbitrator, there cannot be subsisting arbitration existing between the parties, which would enable one of the parties to seek appointment of an arbitrator. Learned single Judge of Delhi High Court relied upon two decisions of the Supreme Court in **P.K.Ramaiah v. Chairman & M.D., National Thermal Power Corpn.** and **State of Maharashtra v. Nav Bharat Builders.**

It is urged by the learned counsel for the petitioner that the Application itself was not maintainable, and learned single Judge ought to have dismissed the same.

Having given due consideration to the submissions made at the Bar, we are of the

view that there is no force in the submissions made. The arbitration clause was extensive and comprehensive enough which says that –

> Except where otherwise provided for in the contract all questions and disputes relating to the meaning of the specification, drawings and instruction herein, as to the quality or workmanship or materials in the work or as to any other question, claim, right, matter or things or any dispute whatsoever in any way arising out of or relating to this contract, shall be referred to the sole arbitrator or any person who shall be appointed by Managing Director, Bharat Heavy Plate & Vessels Ltd., Visakhapatnam at his sole discretion. It shall be no objection to any such appointment even if the arbitrator so appointed in an employee of BHPV, Visakhapatnam, its branches/ offices. Such an appointment of arbitrator shall not take place unless and until a written request for appointment of arbitrator from any of the parties to the contract has been received by the Managing Director as aforesaid.

Under Section 16 of the Act, the arbitral tribunal is empowered to rule on its own jurisdiction including ruling on any objections with respect to the existence or validity of the arbitration agreement. The decisions relied upon by the learned counsel for the petitioner were under the provisions of the Arbitration Act, 1940 and they have no relevance on coming into force of the 1996 Act on the question of reference to be made to the arbitrator.

Learned counsel for the respondent placed reliance upon two decisions of the Supreme Court in **State of Orissa v. Gokulananda Jena** and **FCI v. Indian Council of Arbitration** in support of his contention that all disputed questions between the parties are referred to arbitration. In this case, the question whether or not there is full or final settlement of dues may have to be adjudicated by the arbitrator and not by the Court.

In view of this, there is no force in the writ petition and we hereby dismiss the same.

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(DEVINDER GUPTA, C.J.)

25th November 2004.

(M. NARAYANA REDDY, J.)

ARS

To

1. The Senior Officer, M/s.JMC Projects (India) Limited, Regd.& Corporate Office,Level-11, JMC House, Ambavadi, Ahmedabad 380 006.

2. Two CD copies.